

3/29/10 (3)

**AGREEMENT
BY AND BETWEEN
THE TOWN OF ACTON
AND
ACTON COMMUNITY ACCESS
TELEVISION, INC.**

This Agreement is made this ____ day of March, 2010, by and between the Town of Acton, Massachusetts, a municipal corporation, (hereinafter also referred to as the "Town") acting through its Board of Selectmen (also referred to as the "Issuing Authority" in the cable licenses with Comcast of Massachusetts III, Inc., and Verizon New England, Inc.), and Acton Community Access Television, Inc., (hereinafter also referred to as "ACAT"), a nonprofit corporation duly established under the laws of the Commonwealth of Massachusetts, who agree as follows

RECITALS:

WHEREAS, the Town of Acton (hereinafter also referred to as the "Town") granted a Cable Television Renewal License to Comcast of Massachusetts, III, Inc, (hereinafter also referred to as "Comcast") for an Amended/Restated term from December 21, 2009 through June 28, 2010 and a ten (10) year term from June 29, 2010, through June 28, 2020, and also granted a Cable Television Final License to Verizon New England, Inc., (hereinafter also referred to as "Verizon") for a fifteen (15) year term from October 3, 2006, through October 2, 2021. (References to Comcast and/or Verizon in this Agreement shall apply to any and all transferees or successors to Comcast and/or Verizon);

WHEREAS, the respective cable television licenses referenced above provide to the Town certain public, educational and government ("PEG") Access Channels (hereinafter referred to as "Access Channels"), together with funding and support to the Town and/or its designee (i.e. an access corporation) for PEG Access operations, facilities and equipment (hereinafter PEG Access shall be referred to as "Access");

WHEREAS, ACAT has stated its interest in providing Access programming, services, facilities and equipment to the Town, its residents, and Acton institutions who substantially subscribe to the purposes of the Corporation (collectively hereinafter also referred to as "Access Users"). The term "Access Users" as used in this Agreement shall mean Acton residents, and persons associated with a Acton business or organization who have complied with and have successfully completed ACAT's reasonable requirements for membership and training;

WHEREAS, the Town, pursuant to and consistent with its authority as a municipal corporation and a cable franchising/licensing authority under applicable federal and state law, and the provisions of Article 6 of the License, enters into this Agreement for the provision by ACAT of PEG Access programming, services, facilities and equipment to the Town and Access Users, pursuant to the terms of this Agreement and applicable law;

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

SECTION 1. PURPOSE OF AGREEMENT

The purpose of this Agreement is for the provision of PEG Access programming, services, facilities and equipment pursuant to the terms of this Agreement and applicable law.

SECTION 2. TERM

(a) The Agreement shall be for a five (5) year term, commencing on _____, 2010 and running through and until _____, 2015, unless earlier terminated as provided herein. This Agreement may be extended by a written instrument signed by the authorized representative(s) of both parties.

(b) ACAT shall, at least six (6) months prior to the expiration of the five (5) year period referenced in Paragraph (a) above, give the Board of Selectmen written notice of its request to renew this Agreement for an additional term to June 28, 2020. In response to a written notice of request to renew from ACAT, the Board of Selectmen shall, within sixty days (60) days of receipt of said notice, provide a written response to ACAT as to whether it is willing to renew this Agreement. If, as evidenced by the written notices of ACAT and a written response of the Board of Selectmen, both

parties are interested in renewing this Agreement, the parties shall negotiate to see if an agreement can be reached to so renew said Agreement on terms agreeable to both parties. Failure of the Board of Selectmen to provide a written response shall not result in any automatic renewal of the agreement.

SECTION 3. SCOPE OF SERVICES - PEG ACCESS PROGRAMMING, SERVICES, FACILITIES AND EQUIPMENT

ACAT shall provide Public, Educational, and Government Access programming services, facilities and equipment to the Town of Acton and Access Users, consistent with the funds provided to ACAT pursuant to this Agreement and the reasonable availability of access personnel, contractors and volunteers, and in accordance with applicable law and the operation of a Section 501(c)(3) tax exempt organization. Said Access programming shall include Public, Educational and Government Access programming. The services, facilities and equipment provided by ACAT shall be provided to Access Users on a non-discriminatory basis.

ACAT shall adopt reasonable rules and regulations regarding its financial operations, membership, use of the access facilities, equipment and services by Authorized Users, training requirements, and the frequency and scheduling of programming. ACAT shall periodically review, on no less than an annual basis, its Policies and Procedures. Said Policies and Procedures shall be distributed to all ACAT employees and volunteers. Employees and volunteers shall comply with such Policies and Procedures at all times. An updated copy of the Policies and Procedures shall be provided to the Board of Selectmen as amended.

The Access programming, services, facilities and equipment shall, consistent with the funds available to ACAT, include the following responsibilities:

(a) Schedule, operate and maintain the Public, Educational and Government Access Channels (hereinafter also referred to as the "Access Channels" provided in accordance with the respective cable licenses.

(b) All programming on the Access Channels shall comply with applicable laws and regulations. The Government Access Channel shall not be used for Public Access programming or programming unrelated to Government Access, unless otherwise authorized in writing by the Board of Selectmen. If the Access Channel used to cablecast Educational Access Programming is dedicated solely for Educational Access programming, it shall not be used for Public Access programming or programming unrelated to Educational Access.

(c) All Public Access programming shall require an Acton sponsor, which may be ACAT, by and through its Board of Directors or Staff;

(d) Responsibly manage the annual funding provided to and raised by ACAT, including the funding provided pursuant to this agreement;

(e) Operate and maintain an Access studio in Acton, and purchase and/or lease equipment with the funds provided to and raised by ACAT, including the funding provided pursuant to this agreement;

(f) Conduct outreach and recruitment efforts and activities to increase membership and Access Users;

(g) Conduct training programs in the skills necessary to produce quality PEG Access programming. This training shall include both group and individual training. Both parties acknowledge the importance of a sufficient amount of quality Access training to produce quality PEG Access programming and to provide the skills needed for a quality PEG Access program.

(h) Provide technical assistance to Access Users, using Access Corporation staff and volunteers;

(i) Provide access to production and post-production equipment for Access Users;

(j) Establish rules, procedures and guidelines (including written Access User agreements, which shall be required for all Access Users) for use of the PEG Access Channels, facilities and equipment;

(k) Support the production and promotion of educational, cultural, informational programming and other programs of interest to Access Users and viewers; and encourage the development of locally produced programming.

(l) Cablecast all public meetings of the Acton Board of Selectmen and the Acton Town Meeting, unless otherwise requested by the respective government body or unable to do so due to circumstances beyond the reasonable control of ACAT (the obligation to cablecast these meetings shall remain regardless of the specific amount of funding available to ACAT), and such other Town of Acton meetings (and meetings of other local or regional governmental bodies, if any, in which the Town of Acton is represented) as requested, upon reasonable notice, by the Board of Selectmen or its designee consistent with the funding provided ACAT pursuant to this Agreement and the reasonable availability of Access personnel, contractors, and/or volunteers. Reasonable notice, which does not have to be written notice, shall be deemed to be five (5) business days. If the requested coverage of a

government meeting is less than five (5) business days, ACAT shall reasonably attempt to comply with such request, working out any equipment and staffing scheduling to the best of its ability. The Board of Selectmen retains the right to establish priority with respect to the cablecasting of government meetings. ACAT shall comply with any lawful rules and reasonable requirements of the respective government body with respect to the camera and sound coverage of a meeting. Nothing contained in this subsection is intended to interfere with the rights of any person to record a governmental meeting pursuant to the Open Meeting Law;

(m) ACAT shall be responsible for: (i) providing and installing PEG Access equipment, including cameras and cablecasting equipment at Acton Town Hall, and other such municipal buildings as designated by the Board of Selectmen; and (ii) for providing any equipment needed for “Educational and Municipal Access To Residential Programming” (“EMARP”) at the I-Net hub site (currently at the Memorial Library), other than the EMARP equipment which is the responsibility of the Licensee in the Comcast Renewal License. ACAT’s obligation pursuant to this Subparagraph (m) shall be consistent with the funds provided and available to ACAT pursuant to this Access Agreement. The Board of Selectmen shall provide ACAT with adequate advanced notice of said equipment needs and its request. ACAT and the Town shall cooperate with respect to reaching agreement regarding the provision and installation of any such equipment. ACAT shall consult with the Board of Selectmen or its designee prior to purchasing and installing said equipment.

(n) ACAT shall be responsible for the maintenance and repair of all ACAT (and ACAT provided) facilities and equipment regardless of where located, including ACAT equipment installed at Town and or School buildings. (Also including EMARP equipment, but only at the at the I-Net hub site (currently at the Memorial Library),).

(o) Should ACAT determine that an audit by the Town of payments by a cable licensee is warranted, ACAT shall be responsible for the funding of any such audit by the Town. Nothing herein limits or otherwise restricts the right of the Town to conduct such audit without funding by ACAT.

(p) Nothing in this agreement shall prohibit ACAT from entering into separate agreements with the Acton Public Schools and/or the Acton-Boxborough Regional School District with respect to programming services, facilities and equipment for the Educational Access Channel, however to the extent that the provision of any such separate agreement is inconsistent or in conflict with this Agreement, this Agreement shall remain in full force and effect.

(q) ACAT shall upon a timely request of the Board of Selectmen, Town Manager or the School Committee provide at no cost to the Town a “DVD” (or other appropriate media) copy of a government meeting previously cablecast by ACAT, to the extent available;

(r) Accomplish such other tasks relating to the operation, scheduling and/or management of the PEG Access Channels, facilities and equipment as necessary and appropriate.

(s) ACAT shall serve the Town of Acton unless this MoU is amended by agreement of both parties to include other Towns.

SECTION 4.

ACAT shall develop and enforce policies and procedures which promote the use of the Access channel(s) and make programming accessible to residents and other Access programming viewers, consistent with such time, manner, and place regulations, including safe harbor provisions, as are appropriate to provide for and promote the use of PEG Access Channels, equipment and facilities.

SECTION 5. NON-COMMERCIAL PROGRAMMING

(a) All Access programming cablecast by ACAT shall be non-commercial.

(b) Nothing in the Agreement shall prohibit ACAT from including an appropriate underwriting acknowledgment before or after an Access program, to the extent otherwise not prohibited by applicable law and or the terms of a cable license.

(c) ACAT may charge a reasonable fee for the following services:

(i) services customarily provided to Access Users by a PEG access corporation for a fee;

(ii) services customarily provided to third parties for a fee, including copying (i.e. the provision of DVDs or other video media of particular access programs), to the extent not otherwise prohibited by applicable law, and except where ACAT has agreed to provide such services to the Town or its designees without a fee as set forth in this Agreement, including in Section 3 above;

(iii) Underwriting fees; and

(iv) Membership fee(s). Membership fees shall be set at levels which encourage wide public participation. ACAT shall include a provision for the waiver of dues for reasons of reasonably documented or evidenced financial or other hardship.

SECTION 6. COPYRIGHT CLEARANCE

ACAT shall require all users to agree in writing that they shall make all appropriate and lawful arrangements to obtain all required lawful rights to all material cablecast and clearances from broadcast stations, networks, sponsors, music licensing organizations' representatives, and/or without limitation from the foregoing, any and all other persons as may be necessary to transmit its or their program material over the PEG access channels that are operated and managed by ACAT. ACAT shall maintain for three (3) years for the Town's inspection, upon reasonable notice, copies of all such user agreements.

SECTION 7. FUNDING AND EQUIPMENT OF THE ACCESS CORPORATION

- (a) The Town shall provide ACAT with the following operational funding:
 - (i) The Town shall, within thirty (30) days of the execution of this Access Agreement, provide a payment to ACAT in the amount of Two Hundred One Thousand Nine Hundred Fifty-Six Dollars (\$201,956) from Access operating funding payments paid to the Town by Verizon prior to January 1, 2010, plus the Thirty-Six Thousand Two Hundred Sixty Dollar (\$36,260) February 15th, 2010 operating payment paid by Verizon, pursuant to Section 5.4 of the Verizon License, for a total of Two Hundred Thirty-Eight Thousand Two Hundred Sixteen Dollars (\$238,216).
 - (ii) ACAT shall within thirty (30) days of receipt of the Two Hundred Thirty-Eight Thousand Two Hundred Sixteen Dollars (\$238,216) payment, referenced in Section 7(a)(i) above, provide the Town with a check in the amount of Ten Thousand Dollars (\$10,000) to be placed in a special Town account for cable license administration ("cable license administration fund"). Said funds may be used for cable license administration purposes only. The Town shall, if requested in writing by ACAT, provide ACAT with any public records of such expenditures. If the funding in said cable license administration fund falls below Six Thousand Dollars (\$6,000) at any time, the Town may so notify ACAT in writing, and ACAT shall, no later than ninety (90) days after such written request, provide additional funding to the Town for this fund so as to replenish said fund to the original amount. The cable license administration fund amount may be increased

to Fifteen Thousand Dollars (\$15,000) if deemed necessary by the Board of Selectmen.

(iii) Access operating funding shall be provided quarterly to ACAT by the Town, within thirty (30) days of receipt of the respective quarterly payment by the Town from the respective Licensees. All such quarterly Access operating funding received by the Town shall be provided to ACAT, subject to the terms of this Agreement. The Town shall provide ACAT with any supporting documentation provided to the Town by the cable licensee with its operating payment.

(iii) The Town shall provide ACAT with PEG Access operating funding provided by any future additional cable licensee in an equitable manner, consistent with the Access operating funding provided herein to ACAT in the Comcast and Verizon Licenses. The parties agree to make a good faith attempt to amend this Agreement within a reasonable time after the Town grants any new cable license, in order to effectuate and document the intent of this provision.

(b) The Town shall provide ACAT with the capital funding amount of One Hundred Fifty-Thousand Dollars (\$150,000) received by the Town from Verizon in November 2006, plus the Three Hundred Thousand Dollar (\$300,000) capital payment received from Verizon in February 2010, pursuant to Sections 5.3(i) and (ii) of the Verizon License, plus the Two Hundred Thousand Dollar (\$200,000) capital payment received from Comcast in February 2010, pursuant to Section 6.5 of the Comcast Renewal License. This total of Six Hundred Fifty Thousand Dollars (\$650,000) shall be paid to ACAT within thirty (30) days of the execution of this Agreement. Going forward, all capital funding received from Comcast and/or Verizon, pursuant to Section 6.5 of the Comcast Renewal License and Section 5.3 of the Verizon License shall be provided to ACAT within sixty (60) days of receipt of the respective payments from the respective Licensees, subject to satisfactory performance by ACAT as determined by the Board of Selectmen based on a review which includes, but is not limited to, consideration of the performance reviews referenced in Sections 12 and 13 of this Agreement.

(c) The Town and ACAT shall negotiate, in good faith, an equitable amount of Access Capital funding that shall be provided to ACAT from the PEG Access capital funding provided by any

future additional cable licensee. In lieu of the Town providing said funding to ACAT, the Board of Selectmen may, in its discretion, instruct said cable licensee, in writing, to make said Access payment directly to ACAT. The parties agree to make a good faith attempt to amend this Agreement within a reasonable time after the Town grants any new cable license, in order to effectuate and document the intent of this provision.

(d) ACAT shall be responsible for the maintenance and repair of all ACAT facilities and equipment.

(e) If requested in writing by the Town, ACAT shall, within a reasonable time, not to exceed thirty (30) days, provide an inventory (including models and serial numbers) of all equipment valued over Three Hundred Dollars (\$300) acquired and/or owned by ACAT.

(f) To secure the obligations of ACAT pursuant to this Agreement, including, but not limited to the obligations pursuant to Section 7(g) below, ACAT hereby grants the Town a security interest in all equipment or property, real or personal, purchased with funding pursuant to this Agreement. ACAT agrees to take all steps reasonably requested by the Town to perfect and enforce the Town's security interest, including the execution and processing of financing statements and continuation statements under the Uniform Commercial Code. The Town agrees to subordinate its interest, if necessary, to finance the purchase of equipment or property if deemed reasonably necessary by the Town. The subordination shall only be with respect to the specific equipment or property that ACAT finances. A determination by the Town not to invoke its rights to security interests pursuant to this Section 7(f) shall not affect the obligation of ACAT to return the subject equipment and funds to the Town (or its designee) pursuant to Section 7(g) below. To further secure its obligations pursuant to this Section 7 as described above, ACAT shall take such reasonable actions as requested by the Board of Selectmen or its designee with respect to any funds provided to ACAT by the Town and which have not as of that time been expended by ACAT, including, but not limited to, listing the Town as a beneficiary on any such account holding such funding.

(g) Upon the dissolution of ACAT, the termination of this Agreement, the expiration of this Agreement without a renewal agreement, the expiration of the cable license(s) by the Town with a cable operator(s) without provision for the continued funding of Access thereafter, or any other event that would put the funding, equipment or property (real or personal) provided to ACAT pursuant to this Agreement or purchased by or for ACAT from funds provided pursuant to this Agreement at risk, ACAT shall, if requested at any time in writing by the Town, return to the Town or to one or more

charitable or educational institutions or organizations selected by the Board of Selectmen and created and organized for nonprofit purposes similar to those of ACAT (which qualifies/qualify as tax exempt pursuant to §501(c)(3) of the Internal Revenue Code or the corresponding section of any future federal tax code) all funding, equipment or property (real or personal) provided to ACAT pursuant to this Agreement or purchased by or for ACAT from funds provided pursuant to this Agreement and all unexpended funds previously provided to ACAT pursuant to this Agreement. At the option of the Town said equipment and/or funds shall, upon the occurrence of one of the above referenced contingencies, be provided by ACAT to such organization(s) designated by the Town to manage access, which shall at that time qualify as a tax exempt organization(s) under Section 501(c)(3) of the Internal Revenue Code or the corresponding section of any future federal tax code.

SECTION 8. ACCESS STUDIO

(a) ACAT shall build out, equip and operate an Access facility/studio (hereinafter referred to as the “Access studio”) consistent with the funds provided and available to ACAT pursuant to this Access Agreement and other available funding. The Access studio shall comply with all applicable laws and regulations.

(b) When the Access studio is operational, ACAT shall establish reasonable and regular studio hours, with the specific hours based upon the reasonable needs of Access Users. ACAT shall inform the public, through cablecast on the Public Access Channel, of the days and hours when the studio will be open and available pursuant to the regular schedule and, in addition, if the studio is available, by arrangement upon reasonable request

(c) The Access studio shall be for the exclusive use of ACAT staff and Access Users for production and training in keeping with the mission of ACAT defined in Section 3, above. The Access studio shall not be used for any other purpose or for the benefit of any persons other than Access Users or persons whose specific use of the studio benefits PEG Access in Acton, unless such use is: (i) in the interest of ACAT and the Town of Acton and its residents; (ii) authorized by the Board of Directors of ACAT; and (iii) is reasonably limited in its nature and duration

SECTION 9. GOVERNANCE OF ACCESS CORPORATION

The governance of ACAT shall comply with the following requirements:

- (a) The Bylaws shall be similar to other Access corporations and shall meet the legal and ethical standards of the Commonwealth of Massachusetts and any other regulatory authorities having oversight of Massachusetts non-profit and federal 501(c)(3) corporations.
- (b) The Bylaws shall provide for a role of the Board of Selectmen in the future selection of the Board of Directors, either as currently provided for in ACAT's Bylaws (i.e. the Board of Selectmen shall have the right to formally submit names to the Nominating Committee whenever a Board of Directors is to be selected) or as otherwise agreed to during the term of this Agreement by the Board of Selectmen.
- (c) Meetings of the membership of ACAT and its Board of Directors shall be open to the public except in those instances where the respective membership or Board, in good faith, deems closure of all or some of the meeting to be in the best interest of the Corporation. ACAT is not a governmental body and is not subject to the Massachusetts Open Meeting Law.
- (d) Notice of the regular meetings of the membership and the meetings of the Board of Directors shall be timely cablecast on the Public Access channel or its equivalent.
- (e) The Bylaws shall include Conflict of Interest policies and procedures.(ACAT is not a governmental body and is not subject to M.G.L. c.268A (the "State Ethics Law").
- (f) The Bylaws shall have policies prohibiting Directors and officers for receiving compensation for their services as Directors, with the exception for appropriate reimbursements authorized by the ACAT Directors
- (g) Neither the Board of Directors, nor any officer, shall take any action that would result in the denial or loss of tax-exempt status under the Section 501(c)(3) or any other applicable section of the United States tax code.
- (h) The Board of Directors shall hire an executive director or equivalent who shall operate the day to day operations of the Access Corporation in a professional manner, consistent with the standard of care of the operation of well operated, non-profit, access corporations in similarly sized Massachusetts communities.
- (i) All residents of the Town of Acton, and all businesses, organizations, institutions and other entities located in or directly serving the Town shall be eligible for membership in the

Corporation

SECTION 10. MONTHLY WRITTEN REPORT (FIRST YEAR ONLY)

For one (1) year following the transfer of the initial funding by the Town to ACAT, pursuant to this Agreement, ACAT shall provide a bi-monthly report to the Board of Selectmen and/or its designee, regarding the status and progress with respect to the current and future provision of Access operations and Access programming in Acton.

SECTION 11. ANNUAL REPORT

At least once each calendar year, ACAT shall submit to the Town a written annual report (together with an electronic copy) which shall contain, at a minimum, the following information:

- (a) A summary of programming and services provided;
- (b) A list of future goals;
- (c) A current and complete listing of ACAT's Board of Directors;
- (d) A complete current inventory of all equipment over \$300 in value; and
- (e) A year-end fiscal audit or review, as required by Section 14(a)(iii), below.

SECTION 12. UPDATE MEETING BETWEEN TOWN AND ACAT/PERFORMANCE REVIEW BY BOARD OF SELECTMEN

(a) When requested by the Board of Selectmen, ACAT shall meet with the Board of Selectmen and/or its designee. The purpose of said meeting shall include reviewing ACAT's compliance with the terms and conditions of this Agreement, and hearing comments and/or suggestions from the Town and the public.

(b) The Board of Selectmen and/or its designee shall have the right to question ACAT regarding any aspect of its performance under this Agreement. ACAT shall fully cooperate with the Board of Selectmen or its designee, and shall produce, at its cost, such documents or other materials relevant to such review and evaluation as are reasonably requested by the Town. Members of the public may submit comments during such review hearing, either orally or in writing, at the direction of the Board of Selectmen or its designee.

(c) ACAT shall provide notice of all such performance evaluation hearings by periodic messages on the Public Access channel.

(d) Nothing in this Section shall prohibit the Town of Acton from requesting that ACAT attend other meetings or hearings, or compelling the attendance by ACAT through any lawful means.

SECTION 13. PERFORMANCE REVIEW BY THIRD PARTY

No more than two (2) times during the term of this Agreement, ACAT shall, if requested by the Town of Acton through its Board of Selectmen, be required to engage or retain a person or entity that is knowledgeable and experienced in PEG Access operations in the Commonwealth of Massachusetts to conduct a performance review of ACAT's operations, the cost to be borne by ACAT. Upon completion, ACAT shall submit a copy of the performance review to the Board of Selectmen. If requested, in writing, by the Town, ACAT shall meet with the Board of Selectmen or its designee(s) to discuss the performance review. ACAT shall reasonably cooperate with the Town to implement the changes recommended by the performance review and endorsed by the Board of Selectmen.

SECTION 14. RECORDS AND AUDIT.

(a) ACAT shall maintain all necessary books and records, in accordance with generally accepted accounting principles. Additionally, ACAT shall:

- (i) implement effective internal financial and operating controls for the efficient use of all funds and other resources provided pursuant to this Agreement;
- (ii) maintain all necessary books and records, in accordance with generally accepted accounting principles;
- (iii) have a year-end fiscal audit or review, prepared by an independent certified public accountant. (A fiscal audit (rather than a review) shall be performed if: (a) required by applicable law or regulation, or (b) if requested in writing by the Board of Selectmen no later than the end of the fiscal year. Nothing herein shall limit the contractual authority of the Town pursuant to Sections 14(b) and 14(c) below.
- (iv) make timely payment as due to persons and entities supplying labor, materials or services to ACAT for any purpose under this Agreement; and
- (v) maintain generally accepted business and accounting practices with respect to its operations and investments, financial oversight and management;

(b) Upon request of the Board of Selectmen or its designee, ACAT shall, at a reasonable time(s) during normal business hours, make available any or all of its records with respect to all matters covered by this Agreement.

(c) The Town shall, at its cost, have the right to have the financial books and records of ACAT Access reviewed by a qualified individual or firm. Nothing herein shall be deemed to diminish the responsibility of ACAT, if any, under applicable law or regulation, with respect to any financial record keeping or financial statement and/or audit requirements. Copies of any such financial records, statements or audits shall be provided to the Town upon request of the Board of Selectmen or its designee.

(d) All capital equipment (including furniture) obtained by ACAT will be inventoried and permanently marked, and an inventory, including invoice numbers, maintained and updated.

SECTION 15. INDEPENDENT CONTRACTOR

It is understood and agreed that ACAT is an independent contractor and that no relationship of principal/agent or employer/employee exists between the Town and ACAT. If in the performance of this Agreement any third persons are employed by ACAT, such persons shall be entirely and exclusively under the control, direction and supervision of ACAT. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment shall be determined by ACAT and the Town shall have no right or authority over such persons or terms of employment.

SECTION 16. ASSIGNMENT AND TRANSFER

Neither this Agreement nor any interest or responsibility herein shall be assigned or transferred by ACAT, except as expressly authorized in writing by the Town through its Board of Selectmen.

SECTION 17. FUNDING FROM OTHER SOURCES

Nothing in this Agreement shall prohibit ACAT from obtaining funding from other sources in a lawful manner, including, but not limited to, fundraising activities and sponsorships.

SECTION 18. INDEMNIFICATION OF TOWN BY ACAT

ACAT shall indemnify, defend, and hold harmless the Town, its officials, employees, volunteers and agents from and against any and all claims, suits, actions, causes of action, losses, damages, or liabilities of any kind, nature or description, including, payment of all attorneys' fees and litigation costs and expenses, brought by any person or persons for or on account of any loss, damage or injury to person, property or any other interest, tangible or intangible, or death sustained by or accruing to any person or persons, howsoever the same may be caused, directly or indirectly or arising or resulting from any alleged act(s) or omission(s) of ACAT, its officers, employees, volunteers, agents or subcontractors from or with respect to the performance of this Agreement or arising from or in connection with any claims, loss or damage to person or property arising out of the failure to comply with any applicable laws, rules, regulations or other requirements or orders of local, state or federal authorities, for claims of libel, slander, invasion of privacy, or infringement of common law or statutory copyright, or for breach of contract or other injury or damage in law or at equity which claims, directly or indirectly, result from ACAT's use of channels, funds, equipment, facilities or staff granted under or obtained pursuant to the funding from this Agreement. As to any matter arising under this indemnity provision, the Town reserves the right, but not the duty, to select counsel of its choice to represent its interests. This indemnification requirement shall survive the termination or expiration of this Agreement.

SECTION 19. INSURANCE

ACAT shall, unless otherwise directed in writing by the Town, obtain and maintain in full force and effect at all times during the term of this Agreement all insurance required below by this Section.

(a) *Commercial General Liability Insurance* - Commercial general liability insurance policy, including protective liability, completed operations and broad form contractual liability, property damage and personal injury coverage, with a minimum coverage limit of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate. Said policy shall also include tenant legal liability for property damage, if requested by the Town of Acton. The Town reserves the right to increase these minimum coverage amounts up to Two Million Dollars (\$2,000,000) per occurrence and Three Million Dollars (\$3,000,000) aggregate if circumstances and/or risks warrant.

(b) *Motor Vehicle Liability Insurance* - Automobile liability insurance for owned, leased or rented motor vehicles in the amount of Five Hundred Thousand Dollars (\$500,000) combined single limit.

(c) *Business Personal Property Insurance* - Business personal property insurance for facilities and equipment in the amount of replacement cost.

(d) *Workers' Compensation* - Workers Compensation in the minimum amount of the statutory limit if and when ACAT has an employee.

(e) *Cablecaster's Errors and Omission Insurance* - The Access Corporation shall obtain errors and omission insurance to cover the content of productions which are cablecast on an Access Channel to include, at minimum, the following areas: libel and slander; copyright or trademark infringement; infliction of emotional distress, invasion of privacy; plagiarism; misuse of musical or literary materials. This policy shall not be required to cover individual Access producers. The minimum amount of said insurance shall be One Million Dollars (\$1,000,000).

(f) The following conditions shall apply to the insurance policies referenced above:

- (i) The Town shall be named as an additional insured on all aforementioned insurance coverages to the extent allowed by law, other than the workers' compensation policy. The policies shall provide that no cancellation, material change in coverage or expiration may be affected by the insurance company or ACAT without first giving the Town thirty (30) days written notice prior to the effective date of such cancellation or change in coverage;
- (ii) Such insurance shall be primary with respect to any insurance or self-insurance maintained by the Town and shall not call on the Town's insurance for contributions;
- (iii) Such insurance shall be obtained from producers authorized to transact insurance business in the Commonwealth of Massachusetts and, unless otherwise agreed to in writing by the Town, shall be provided by an insurance carrier(s) licensed to do business for the coverage provided in the Commonwealth of Massachusetts by the Massachusetts Division of Insurance;
- (iv) The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those

required herein and follow the same form. (Any umbrella policy shall cover all underlying liability insurance, including motor vehicle liability insurance);

- (v) The cost of such insurance, including all premiums and deductibles, shall be borne by ACAT;
- (vi) The parties shall periodically review the insurance coverage and coverage mounts required above to determine whether said insurance adequately protects the parties and is cost effective given available funding pursuant to this Agreement;
- (vii) The failure of ACAT to maintain the insurance required herein shall be grounds for the Town to suspend or terminate this Agreement immediately, without resort to the termination procedures provided in Section 20 below, provided, however, that if any required insurance maintained by ACAT is terminated through no fault of ACAT , then ACAT shall have thirty (30) days o obtain replacement insurance that complies with this Agreement before the Town may suspend or terminate this Agreement; and
- (viii) If the Town's own minimum coverage amount for any of the insurance referenced above is higher than that required herein of ACAT or otherwise increases, the Board of Selectmen may require ACAT to increase its corresponding insurance coverage within twelve (12) months written notification by the Board of Selectmen to ACAT, unless such increased insurance coverage is commercially unavailable or available only at an unreasonable cost to ACAT.

(g) Directors' and Officers' Liability Insurance - ACAT shall obtain directors' and officers' liability insurance for its directors and officers.

SECTION 20. COMPLIANCE WITH LAWS AND REGULATIONS

ACAT shall be governed by, operated in accordance with, and comply with all applicable laws and regulations.

SECTION 21. TERMINATION OF AGREEMENT - TRANSFER OF ASSETS

(a) The Town, through its Board of Selectmen, shall have the right upon thirty (30) days written notice to ACAT to terminate this Agreement for:

- (i) Malfeasance, misfeasance, misappropriation or waste of funds provided pursuant to this Agreement;

- (ii) Loss of (or failure to obtain in a reasonable time) 501(c)(3) status by ACAT;
- (iii) ACAT filing a petition of bankruptcy, or for receivership or reorganization, has filed any other petition under the bankruptcy law, or has taken or committed an act preparatory to the filing of any such petition, has become insolvent or has committed any other act of bankruptcy or insolvency, or has a substantial portion of its assets assessed for the benefit of creditors;
- (iv) The loss of a substantial portion of PEG Access funding as a result of a change in the financial terms of a cable license, a change in the status of a cable service licensee or a change in law.; or
- (v) For any material breach of a material provision of this Agreement by ACAT, as further described in this Section 20 below.

(b) ACAT may avoid termination by curing any such breach within thirty (30) days of written notification or such longer time as the Board of Selectmen determines. Upon a third (3rd) material breach by ACAT over the course of a twenty-four (24) month period, the Town may terminate the Agreement upon written notice provided without any cure period as long as said notice is provided within ninety (90) days after the material breach (each day a material breach continues shall be deemed to be an actionable day for purposes of this requirement to terminate within said 90-day period).

(c) ACAT shall have the right upon sixty (60) days written notice to the Town to terminate this Agreement for material breach of any material provision of this Agreement by the Town. The Town may avoid termination by curing any such breach within said sixty (60) day period.

(d) All written notices of termination shall include a reasonably detailed description of the alleged breach.

(e) See Section 19(f)(vii) for suspension or termination as a result of ACAT's failure to maintain the required insurance.

(f) See Section 7(f) and (g) above regarding security interests, return of funds, return of equipment, real property, fixtures, contracts, leases, deposit accounts or other assets received by or purchased by ACAT with funds received pursuant to this Agreement.

SECTION 22. MISCELLANEOUS PROVISIONS

Section 22.1 Entire Agreement/Amendment

This instrument contains the entire agreement between the parties, which supersedes all prior agreement or proposals except as specifically incorporated herein, and cannot be changed orally, but only by a written instrument executed by both parties (with the Board of Selectmen signing on behalf of the Town).

Section 22.2 Cooperation

Each party agrees to cooperate with the other party to carry out the provisions of this Agreement.

Section 22.3 Captions

The captions to sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of the Agreement. Such captions shall not affect the meaning or interpretation of the Agreement.

Section 22.4 Liability of Town Officials and Employees

To the fullest extent permitted by law, no official, employee, agent or representative of the Town shall be individually or personally liable on or for any obligation of the Town under this Agreement.

Section 22.5 Warranties

ACAT warrants, represents and acknowledges that as of the date of execution of this Agreement:

(a) ACAT is duly organized, validly existing and in good standing non-profit corporation under the laws of the Commonwealth of Massachusetts and is actively seeking approval from the Internal Revenue Service as a 501(c)(3) charitable corporation.

(b) ACAT has the requisite power and authority under applicable law and its articles of incorporation and by-laws, is authorized by resolutions of its Board of Directors or, and has secured all consents which are required to be obtained as of the date of execution of this Access Agreement to

enter into and legally bind ACAT to this Agreement and to take all actions necessary to perform all of its obligations pursuant to this Agreement;

(c) This Access Agreement is enforceable against ACAT in accordance with the provisions herein; and

(d) There is no action or proceedings pending or threatened against ACAT which would interfere with its performance of this Access Agreement.

Section 22.6 Force Majeure

If by reason of Force Majeure either party is unable in whole or in part to carry out its obligations hereunder, said party shall not be deemed in violation or default during the continuance of such inability, provided the party takes immediate and diligent steps to comply as soon as possible under the circumstance with this Agreement without endangering the health or safety of persons or property. The term "Force Majeure" as used herein shall include, but not be limited to, the following: acts of God; acts of public enemies; orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivision, or officials, or any civil or military authority, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, hurricanes, volcanic activity, storms, floods, washouts, civil disturbances, explosions, strikes, and unavailability of essential equipment, service or materials, the unavailability of affordable insurance coverage, or other matters beyond the reasonable control of the party. In the event that any such delay in performance or failure to perform affects only part of the party's capacity to perform, the Licensee shall perform to the maximum extent it is able to do so in as expeditious a manner as possible. The party subject to Force Majeure shall upon learning of the Force Majeure occurrence covered by this Section which affects its performance under this Agreement, promptly notify the other party in writing of the claimed occurrence.

Section 22.7 Non-Waiver

Failure of either party to insist on strict performance of any portion of this Agreement or to exercise its rights or remedies hereunder upon the failure of performance or default of the other party, shall not be considered a waiver of the right to insist upon or to enforce any provision of this Agreement or to exercise any right or remedy occurring as a result of any future failure of performance or default.

Section 22.8 Severability

(a) If any non-material section, sentence, paragraph, term or provision of this Agreement is determined to be illegal, invalid, unenforceable or unconstitutional or is otherwise void, by any court of competent jurisdiction or other entity with similar legal authority such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which shall remain in full force and effect for the term of the Agreement.

(b) In the event that a material section, sentence, paragraph, term or provision of this Agreement is determined to be illegal, invalid, unenforceable or unconstitutional or is otherwise void, by any court of competent jurisdiction or other entity with similar legal authority, the parties agree to immediately enter into negotiations in good faith and make equitable amendments to restore the relative burdens and benefits of this Access Agreement. Notwithstanding the foregoing, if a party believes a provision is not material, it must so notify the other party within thirty (30) days of a request by such other party that it enter into negotiations to make amendments, or else the claim of non-materiality is waived. The obligation to negotiate is not tolled by, and the parties must discharge their negotiation responsibility notwithstanding, a dispute as to materiality. The remedies provided for herein do not prevent a party from contending that a particular provision is enforceable, or foreclose any remedies if a provision is enforceable.

Section 22.9 Applicable Law

This Agreement shall be interpreted and enforced under the laws of the Commonwealth of Massachusetts.

Section 22.10 Jurisdiction and Venue

Jurisdiction and venue of any legal action arising from this Access Agreement shall be in the Middlesex Superior Court. If no subject matter jurisdiction exists in the Superior Court, the legal action shall be brought in the District Court in Concord. The parties by this Access Agreement subject themselves to the personal jurisdiction of said courts for all purposes, including the entry of judgment and for the resolution of any dispute, action or suit.

Section 22.11 Notice

Official notice shall be in writing, and delivered or sent by certified mail - return receipt requested or express mail - signature required. Delivery shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of delivery. Certified mail shall be deemed to have been given two (2) days after mailing and express mail shall be deemed to have been given the day after mailing. Notice shall be addressed as provided below or such other name, title and/or address as hereinafter provided in writing by the respective party:

TOWN OF ACTON

Board of Selectmen
Acton Town Hall
472 Main Street
Acton, Massachusetts 01720

ACTON COMMUNITY ACCESS TELEVISION, INC.

2 Flagg Rd
Acton, Massachusetts 01720

with a copy to: the Town Administrator at the same address

IN WITNESS WHEREOF, the parties have executed this Agreement as a sealed instrument this ____ day of March, 2010.

TOWN OF ACTON
By the Board of Selectmen

**ACTON COMMUNITY ACCESS TELEVISION,
INC.,**
By its President

Paulina Knibbe, Chair

Brendan Hearn

Peter Berry

I certify that the Board of Directors has
approved the adoption of this agreement

Terra Friedrichs

John R. Covert, Clerk

Mike Gowing

Lauren Rosenzweig

Approved as to legal form:

Special Cable Counsel